

MINUTES
POLICY ADVISORY OPINION COMMITTEE MEETING
TEXAS BOARD OF PROFESSIONAL ENGINEERS
1917 IH-35 SOUTH, BOARD ROOM, AUSTIN, TEXAS
February 15, 2012—8:30 AM

CALL TO ORDER. Committee Chair, Lamberto “Bobby” Ballí, P.E., called the Policy Advisory Opinion Committee (PAOC) meeting to order at 8:31 am on February 15, 2012, at the Texas Board of Professional Engineers, 1917 South Interstate 35, Austin, TX 78741 (All votes are unanimous, unless otherwise noted).

1. Roll call and welcome visitors.

Lamberto “Bobby” Ballí, P.E.	Chair
Daniel Wong, Ph.D., P.E.	Member
Govind Nadkarni, P.E.	Member
Edward Summers, Ph.D.	Member

A quorum was present. Mr. Edmundo Gonzalez, Jr., P.E., Emeritus Board Member was present.

The following staff members were present:

Lance Kinney, P.E.	Executive Director
Priscilla Pipho, MPA	Deputy Executive Director
C.W. Clark, P.E.	Director of Compliance & Enforcement
Dewey Helmcamp, III, JD	Staff Attorney
Charles Pennington, P.E.	Staff Engineer
Dorothy Gonzales	Executive Assistant

Visitors. Peyton McKnight, American Council of Engineering Companies – Texas.

2. Public comment. None.

DISCUSS AND POSSIBLY ACT ON THE FOLLOWING ITEMS (AGENDA ITEMS 3-6):

3. Discuss and possibly approve the November 17, 2011, Policy Advisory Committee Minutes.

It was MOVED/SECONDED (Nadkarni/Summers) to approve the November 17, 2011, Policy Advisory Committee Minutes as submitted. A vote was taken, and the MOTION PASSED.

4. Engineering Advisory Opinion Request (EAOR) #31 – Designated Engineering Representative (DER).

- Consideration of whether a DER is required to be licensed in Texas.
Mr. Pennington reported that this EAOR was presented at the previous PAOC meeting. Staff was directed to research more on the practice of contractors not being licensed engineers. Staff analyzed the statute, especially the federal employee exemption §1001.054; which states federal employees and officers are exempt from the requirements of the Act. The staff attorney did further research on the meaning of federal employees and officers. After further discussion amongst staff, it was concluded that the definition of a federal officer was very specific and DERs did not seem to fit the definition; therefore they did not fall under the federal employee exemption. However, in an Office of Attorney General (OAG) Opinion JC0390 issued in 2001, a ruling was cited in a United States Supreme Court case, *Sperry vs. Florida*, which staff believed was very pertinent to the issue at hand. In light of these findings, staff suggests that the Board request an OAG Opinion regarding a possible DER exemption. Mr. Pennington added that staff would write

up the opinion and have it revised and approved by Mr. Nadkarni. Mr. Ballí asked Mr. Nadkarni's opinion on this item. Mr. Nadkarni's commented that with the staff attorney's further research, the Board has more information and agrees for the request for an OAG Opinion. Mr. Ballí asked what the Board's position is if a DER enforcement complaint is received. Mr. Helmcamp commented that the Board has not demanded or required that DERs be licensed professional engineers nor has it opened a case against a DER. Pending the response of the OAG Opinion, the Board can be prepared to handle a complaint against a DER using the same process as any other complaint. Mr. Pennington added that he contacted the Ft. Worth Aircraft certification Office which is the local FAA office that oversees the DERS. They have been very supportive and informative on how the DER program is executed and monitored.

It was MOVED/SECONDED (Summers/Wong) to recommend to the Board at its Regular Quarterly Board meeting on February 15, 2012, to proceed with seeking an OAG Opinion to determine the Board's role regarding DERs. A vote was taken and the MOTION PASSED.

5. EAOR #32 – Request regarding Texas Engineering Practice Act Board Rules (Act & Rules) and Staff Procedures.

Consideration of whether staff can deviate from the Act & Rules.

- Draft Opinion Letter

Mr. Pennington reported that EAOR #32 is a request from Ms. Carol Hemphill asking whether Committee or staff members are allowed to deviate from Board rules as outlined in the engineering practice act without full Board approval. Staff prepared the enclosed draft response for the Committee's recommendation for approval. Dr. Summers commented that he did not see a response to the question regarding the PEs that did not pass the exam but got licensed. Mr. Kinney responded that the request asked that this information be brought before the Licensing Committee for review and therefore did not require a written response. Mr. Kinney added that this part of the request was addressed at the Licensing Committee and he gave a brief summary of the exhibit presented at the Licensing Committee meeting.

It was MOVED/SECONDED (Summers/Nadkarni) to recommend to the Board at its Regular Quarterly Board meeting on February 15, 2012, to approve the response letter to EAOR #32, and to send it to the requestor. A vote was taken and the MOTION PASSED.

6. Issues for consideration and schedule next meeting.

Response or update to EAOR #31, Designated Engineering Representative (DER), if received in time for the next scheduled PAOC meeting.

ADJOURN.

It was MOVED/SECONDED (Nadkarni/Wong) to adjourn the meeting at 8:58 am. A vote was taken, and the MOTION PASSED.

Date Committee approved as submitted:

May 24, 2012

Date Board accepted:

May 24, 2012